

1 Edmond "Buddy" Miller
2 (Bar No. 3116)
3 1610 Montclair Avenue, Suite C
4 Reno, NV 89509
5 Telephone: (775) 828-9898
6 Facsimile: (775) 828-9893
7 Email: bmillar@buddymillerlaw.com
8 *Counsel for Carson City,*
9 *a consolidated municipality*

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7 **UNITED STATES BANKRUPTCY COURT**
8 **DISTRICT OF NEVADA**
9

10 In re:
11 EMPIRE RANCH GOLF COURSE, LLC,
12
13 Debtor.

Case No.: BK-N-15-50211-GWZ

Chapter: 11

**NOTICE OF CARSON CITY'S
REQUESTED CHANGES TO THE
DEBTOR'S PROPOSED ORDER: (1)
AUTHORIZING POST-PETITION
FINANCING; (2) GRANTING POST-
PETITION LENDER SENIOR LIEN
PURSUANT TO 11 U.S.C. §364(d); AND (3)
AUTHORIZING USE OF LOAN
PROCEEDS TO PAY OFF EXISTING
FIRST PRIORITY LIEN CLAIM
PURSUANT TO 11 U.S.C. §363(b), AND
THE DEBTOR-IN-POSSESSION LOAN
AND SECURITY AGREEMENT**

**Hearing Date: October 15, 2015
Hearing Time: 4:00 p.m.
Est. Time Req'd:
Set by: OST**

24
25 Carson City, a party in interest in the above-referenced Chapter 11 case, by and through its
26 undersigned counsel, Edmond Buddy Miller, Esq., hereby submits its requested changes to the
27 Debtor's proposed Order: (1) Authorizing Post-Petition Financing; (2) Granting Post-Petition
28 Lender Senior Lien Pursuant To 11 U.S.C. §364(d); And (3) Authorizing Use Of Loan Proceeds

1 To Pay Off Existing First Priority Lien Claim Pursuant To 11 U.S.C. §363(b), and Carson City's
2 requested changes to the Debtor-In-Possession Loan and Security Agreement. The requests are
3 attached hereto as **Exhibit 1**, and have been sent to Mr. Darby, Ms. Tirre, Mr. Azevedo and Mr.
4 Cossitt.

5 The undersigned counsel and Carson City respectfully apologize to the Court for
6 submitting these suggested changes on the day of the scheduled hearing.

7 Dated this 15th day of October, 2015

8 /s/ Edmond Buddy Miller

9 _____
10 Edmond "Buddy" Miller,
11 *Counsel for Carson City,*
12 *a consolidated municipality*

EXHIBIT 1

EXHIBIT 1

Carson City's Requested Changes To The Debtor's Proposed Order: (1) Authorizing Post-Petition Financing; (2) Granting Post-Petition Lender Senior Lien Pursuant To 11 U.S.C. §364(d); And (3) Authorizing Use Of Loan Proceeds To Pay Off Existing First Priority Lien Claim Pursuant To 11 U.S.C. §363(b), And The Debtor-In-Possession Loan And Security Agreement

A. Changes to the proposed Order: (1) Authorizing Post-Petition Financing; (2) Granting Post-Petition Lender Senior Lien Pursuant To 11 U.S.C. §364(d); And (3) Authorizing Use Of Loan Proceeds To Pay Off Existing First Priority Lien Claim Pursuant To 11 U.S.C. §363(b)

1. Page 2, line 6: please insert "to §" before "364(d)".
2. Page 2, line 22: please insert after "real property" the words "and certain personal property".
3. Page 2, line 22: please delete the period at the end of this sentence and then insert ", as follows:".
4. Page 2, line 23: Please insert the following as part of subsection g, above, and before subsection h:
 - (1) **Debtor's Real Property**: 1875 Fair Way Drive, Carson City, Nevada. Debtor's real property consists of approximately 221-acres of real property, also known as Carson City Assessor's Parcel Number 010-581-15 ("Debtor's Real Property").
 - (2) **Effluent Service Agreement and Addenda**: Debtor's Real Property is subject to certain covenants that run with the land, and easements and right of ways in favor of Carson City, which allow Carson City to supply and the Debtor to accept and apply effluent (reclaimed waste water) to Debtor's Real Property. In this regard the rights and obligations of the Debtor and Carson City are addressed in the following:
 - i. Agreement dated March 17, 1983 and recorded on March 17, 1983, in Book 337, page 111, as Document No. 17118, Official Records of Carson City, Nevada; and
 - ii. Addendum dated April 28, 1988 and recorded April 29, 1988, as Document No. 69901, Official Records of Carson City, Nevada; and
 - iii. Addendum dated September 20, 1995 and recorded June 22, 2004, as Document No. 320670, Official Records of Carson City, Nevada; and

- iv. Addendum dated August 16, 1996 and recorded August 16, 1996, as Document No. 192825, Official Records of Carson City, Nevada; and
- v. Addendum dated September 22, 1997 and recorded June 22, 2004, as Document No. 320670, Official Records of Carson City, Nevada; and
- vi. Addendum dated June 4, 2004 (the “2004 Addendum”) and recorded June 22, 2004, as Document No. 320670, Official Records of Carson City, Nevada; and
- vii. Addendum dated May 18, 2006 and recorded on May 19, 2006, as Document No. 353941, Official Records of Carson City, Nevada.

The Agreement and Addenda identified above shall collectively be referred to as the “Effluent Service Agreement”. Pursuant to the Effluent Service Agreement, Carson City agrees to supply and the owner of Debtor’s Real Property agrees to accept not less than 790 acre-feet of reclaimed waste water per year, subject to the limitations set forth in the Effluent Service Agreement, the 2004 Addendum, and Paragraph A.2. therein. At the request of said owner, Carson City agrees to supply additional reclaimed waste water in an amount up to 1,385 acre-feet per year subject to the availability of such reclaimed waste water and Carson City's contractual obligations, which are of a higher priority, as more fully set forth in the Effluent Service Agreement and the 2004 Addendum.

- 5. Page 3, line 3: please delete “grated” and insert “granted”.
- 6. Page 3, line 7: please delete “proceed” and insert “proceeds”.
- 7. Page 3, line 12: please replace “, should any future taxes go unpaid to Carson City” with “for any ad valorem taxes on the Debtor’s real or personal property that become delinquent under Chapter 361 of the Nevada Revised Statutes after the date of entry of this Order”.
- 8. Page 3, line 13: please replace “future taxes go unpaid” with “ad valorem taxes on the Debtor’s real or personal property become delinquent after the date of entry of this Order”.
- 9. Page 3, line 13: after the phrase “the right to perfect a senior first priority tax lien” please insert “with priority over Post-Petition Lender’s senior lien under § 364(d)(1), and Carson City may seek from the Court relief from the automatic stay of § 362(a) to enforce such tax liens”.

10. Page 3, line 14: please insert before “IT IS SO ORDERED” the following additional paragraph:

IT IS FINALLY ORDERED THAT Counsel for the Debtor shall serve a copy of this Order on Post-Petition Lender within one (1) day after entry of this Order, and, in addition, record a certified copy of this Order in the Office of the Carson City Recorder within three (3) days after entry of this Order.

B. Changes to the Debtor-In-Possession Loan and Security Agreement (“Agreement”):

11. Page 1: please delete the following recital:

WHEREAS, to provide security for the \$1,300,000.00 loan, Borrower has agreed to grant Lender a senior security interest in and senior liens against all of Borrower's real property located at 1875 Fair Way Drive, Carson City, Nevada, which consists of approximately 221-acres of real property, plus certain contractual rights to receive 1,385 acre feet of effluent water from Carson City per year (“Borrower’s Real Property”), on the terms and conditions set forth herein and in accordance with Section 364(d) of the Bankruptcy Code;

12. Please replace the foregoing deleted recital with the following:

WHEREAS, to provide security for the \$1,300,000.00 loan, Borrower has agreed to grant Lender, on the terms and conditions set forth herein and in accordance with Section 364(d) of the Bankruptcy Code, a senior security interest in and senior liens against all of Borrower's real property and certain personal property (“Borrower’s Real And Certain Personal Property”), as follows:

(1) **Borrower’s Real Property**: 1875 Fair Way Drive, Carson City, Nevada. Borrower’s real property consists of approximately 221-acres of real property, also known as Carson City Assessor’s Parcel Number 010-581-15 (“Borrower’s Real Property”).

(2) **Effluent Service Agreement and Addenda**: Borrower’s Real Property is subject to certain covenants that run with the land, and easements and right of ways in favor of Carson City, which allow Carson City to supply and the Borrower to accept and apply effluent (reclaimed waste water) to Borrower’s Real Property. In this regard the rights and obligations of the Borrower and Carson City are addressed in the following:

- i. Agreement dated March 17, 1983 and recorded on March 17, 1983, in Book 337, page 111, as Document No. 17118, Official Records of Carson City, Nevada; and

- ii. Addendum dated April 28, 1988 and recorded April 29, 1988, as Document No. 69901, Official Records of Carson City, Nevada; and
- iii. Addendum dated September 20, 1995 and recorded June 22, 2004, as Document No. 320670, Official Records of Carson City, Nevada; and
- iv. Addendum dated August 16, 1996 and recorded August 16, 1996, as Document No. 192825, Official Records of Carson City, Nevada; and
- v. Addendum dated September 22, 1997 and recorded June 22, 2004, as Document No. 320670, Official Records of Carson City, Nevada; and
- vi. Addendum dated June 4, 2004 (the “2004 Addendum”) and recorded June 22, 2004, as Document No. 320670, Official Records of Carson City, Nevada; and
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The Agreement and Addenda identified above shall collectively be referred to as the “Effluent Service Agreement”. Pursuant to the Effluent Service Agreement, Carson City agrees to supply and the owner of Borrower’s Real Property agrees to accept not less than 790 acre-feet of reclaimed waste water per year, subject to the limitations set forth in the Effluent Service Agreement, the 2004 Addendum, and Paragraph A.2. therein. At the request of said owner, Carson City agrees to supply additional reclaimed waste water in an amount up to 1,385 acre-feet per year subject to the availability of such reclaimed waste water and Carson City's contractual obligations, which are of a higher priority, as more fully set forth in the Effluent Service Agreement and the 2004 Addendum.

13. Replace the defined term “Borrower’s Real Property” with the revised defined term “Borrower’s Real And Certain Personal Property” in the rest of the Agreement.